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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Docket No. 76-1003

LAWRENCE V. LONGHI,

Petitioner,

vs.

ESSEX COUNTY PROBATION DEPARTMENT, and DEPARTMENT OF CIVIL SERVICE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

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PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

Petitioner prays that a writ of certiorari issue to review a judgment of the Superior Court of New Jersey, Appellate Division, which judgment modified in part and affirmed in part a ruling made by the New Jersey Department of Civil Service and directed that an Order be entered suspending petitioner from his employment as Senior Probation Officer with the Essex County, New Jersey Probation Department for a period of six (6) months.

Questions Presented

1. Whether petitioner's rights under the due process clause of the United States Constitution were violated when petitioner was removed from his position of employment as a permanent Civil Service employee in a classified position merely by way of a letter informing him that he had been terminated without notice of any charge and without being afforded an opportunity for a departmental hearing.

2. Whether petitioner's rights under the due process clause of the United States Constitution were violated by the Opinion and Order of the Superior Court of New Jersey, Appellate Division, which suspended petitioner from his position of employment as a permanent Civil Service employee in a classified position without notice of the charge and without being afforded an opportunity for a departmental hearing.

3. Whether petitioner, as a permanent Civil Service employees in a classified field, may be suspended and/or removed from his position of employment without notice of any charge and without a departmental hearing.

4. Whether the use of N.J.A.C. 4:1-16.14 as a vehicle to charge petitioner with being absent without leave violated petitioner's due process rights under the United States Constitution.

5. Whether the action taken against petitioner by the Essex County Probation Department and by the Superior Court of New Jersey, Appellate Division, violated petitioner's right to freedom of speech as guaranteed under the First and Fourteenth Amendments.

6. Whether the inexcusable delay by the Department of Civil Service in taking any action on petitioner's re-

quest fof a Civil Service hearing violated petitioner's rights of due process guaranteed by the Constitution of the United States.

Jurisdiction

Petitioner was appointed as an employee with the County of Essex on April 1, 1958 as a marriage counsellor. Thereafter petitioner rose to the permanent position of Senior Probation Officer and was the founding director of the Essex County Narcotics Clinic, an entity funded by the State of New Jersey and structured through the Essex County Probation Department.

As a result of discussions concerning the responsibility of the Clinic staff to report the names of addicts who voluntarily came to the Clinic for treatment to law enforcement authorities, a question arose whether the Clinic should become an independent body or remain structured through the Probation Department. On March 17, 1970 petitioner submitted to the Director of the Essex County Board of Chosen Freeholders a report, written at the Board's request, explaining reasons for making the Clinic independent of the Probation Department. A copy of this report was submitted to Mr. Mulligan, Chief Probation Officer, at the Probation Department the day it was submitted to the Board of Freeholders. That same day petitioner was relieved of his duties as director of the Clinic by William Mulligan.

On March 20, 1970 petitioner received a letter tranferring him out of the Clinic, the transfer to be effective March 23, 1970. On March 20, 1970 petitioner was told by State officials in Trenton that under no circumstances was he to leave the Clinic or his patients until an orderly transition could be effected. From March 20, 1970 on-

wards, petitioner continued to perform his duties at the Clinic.

On March 30, 1970 petitioner was sent a letter by Mr. Mulligan stating that petitioner had been absent without leave since March 23, 1970 and that his employment had been terminated, resulting in his removal from the permanent Civil Service status.

On April 10, 1970 petitioner filed a request pursuant to N.J.A.C 4:1-5.3 with the Civil Service Commission challenging his removal as a result of the letter dated March 30, 1970.

On November 30, 1971 a hearing was held before hearings officer Anthony J. Statile. The sole issue presented to the hearing officer was the legality of petitioner's removal by letter without notice on the prescribed Civil Service forms and without an opportunity for a departmental hearing prior to removal.

On January 13, 1972 hearing officer Statile issued his report affirming petitioner's removal. However, this hearing was eventually ordered reopened in order to correct certain glaring legal errors committed by the hearing officer with regard to the burden of proof.

A new hearing, pursuant to petitioner's original request under N.J.A.C 4:1-5.3, was held on September 12, 1973 but adjourned. The rehearing was held on August 8, 1974 and August 15, 1974. The sole legal issue before the hearing officer was the legality of petitioner's removal by letter without notice on the prescribed Civil Service forms and without an opportunity for a departmental hearing prior to removal. At this hearing the Probation Department contended that N.J.A.C. 4:1-16.14 was the authority for removal. This section then read as follows:

> "*Resignation resulting from unauthorized absence*:
>
> (a) Any employee who is absent from duty for five consecutive business days without notice and approval of his superior of the reason for such absence and the time he expects to return or who fails to report for duty within five business days after the expiration of any authorized leave shall be held to have resigned not in good standing.
>
> (b) The employee shall be properly notified of the action by personal service or certified mail as provided by regulation. The appointing authority shall report the resignation to the Department of Civil Service."[1]

This Civil Service hearing resulted in a determination by the hearing officer on November 15, 1974 affirming the removal of the petitioner from his permanent position as Senior Probation Officer in the Essex County Probation Department.

An appeal to the Civil Service Commission as a whole was taken, which resulted in a decision on March 3, 1975 affirming the decision of the hearing officer.

On April 14, 1975 petitioner filed an appeal with the Superior Court of New Jersey, Appellate Division. On May 17, 1976 the Appellate Division ruled that petitioner's removal was improper. However, instead of remanding the matter to the Civil Service Commission, the Appellate Division further ruled that in view of the overall circumstances, an appropriate penalty would have been a reprimand and a six-month suspension without pay. The

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[1] This rule was amended on February 1, 1972 to include notice and departmental hearing. Thus this section can no longer be used in the manner in which it was used against petitioner.

Appellate Division entered an Order accordingly. (Appendix B)

A petition for a writ of certification to the Supreme Court of New Jersey was taken. This petition was denied without opinion on September 23, 1976. (Appendix A)

Statement of the Case

This is an application for a writ of certiorari to review a judgment of the Superior Court of New Jersey, Appellate Division, which affirmed in part and modified in part the determination of the Civil Service Commission of the New Jersey Department of Civil Service.

The following constitutes a brief synopsis of the testimony taken at the various Civil Service hearings on the issue of petitioner's removal from office. Petitioner was removed from his office by letter dated March 30, 1970, which stated he was absent without leave and that his name had been removed from the payroll as of March 23, 1970. During the period of time that he was charged with being absent without leave, petitioner continued to work at the Clinic and his whereabouts were at all times known to Mr. Mulligan and the supervisors of the Probation Department. (August 8, T 198-13)[2]

On April 10, 1970 petitioner filed a request for a Civil Service hearing pursuant to N.J.A.C. 4:1-5.3 to the Civil Service Commission for relief complaining that he had not been given notice of any charge against him on the forms prescribed by Civil Service, nor was he given a departmental hearing to which he was entitled under Civil Service Rules N.J.A.C. 4:1-16.8[3] and N.J.A.C. 4:1-5.15 and under New Jersey law, N.J.S.A. 11:15-2, and thus his removal by the letter of March 30, 1970 was accomplished in total disregard of his rights to due process. Petitioner was forced to proceed under N.J.A.C. 4:1-5.3 because of the County's total disregard of the established procedures applicable to removal.

[2] Referring to transcript August 8, 1974, page 198, line 13.

A Civil Service hearing was held pursuant to petitioner's request on November 20, 1971. The sole issue presented to the hearing officer was the legality of petitioner's removal by the letter dated March 30, 1970, which removal was effectuated without a notice of any charge or a departmental hearing.

It is undisputed that before a permanent Civil Service employee in the classified field such as petitioner may be removed, he must first be served with notice of the charge on the appropriate Civil Service form and be afforded the opportunity to have a departmental hearing on the charge prior to removal. It is equally undisputed that no notice or departmental hearing were ever afforded petitioner prior to his removal by letter of March 30, 1970.

At this Civil Service hearing the hearing officer allowed into evidence testimony regarding alleged acts of so-called insubordination and neglect of duty by petitioner.[4] These

[3] N.J.A.C. 4:1-16.8, Removal (a) "A permanent employer in the classified service may not be removed except for just cause upon written charges. Notice of removal shall be sent to the employee on the form prescribed by Civil Service."

[4] This was the result of an attempt by the Probation Department to cover up its obvious error in the manner in which it removed petitioner Over two and one-half months after petitioner had been removed, the Probation Department attempted to file late, improper and unsubstantiated charges of insubordination and neglect of duty.

allegations were totally irrelevant to the purpose of the hearing, which was simply to decide the legality of petitioner's removal by way of letter without a departmental hearing. However, the hearing officer relied upon these charges in affirming the Probation Department's removal of petitioner. This hearing was ordered reopened because of glaring errors in the manner in which it was conducted.

At the Civil Service rehearing held on August 8, 1974 and August 15, 1974 the sole issue again before the hearing officer was the legality of petitioner's removal by the letter dated March 30, 1970 without notice and without a departmental hearing.

At this hearing the Probation Department relied upon N.J.A.C. 4:1-16.14 as justification for its removal of petitioner without a prior departmental hearing. This section then read as follows:

> *"Resignation resulting from unauthorized absence*:
>
> (a) Any employee who is absent from duty for five consecutive business days without notice and approval of his superior of the reason for such absence and the time he expects to return or who fails to report for duty within five business days after the expiration of any authorized leave shall be held to have resigned not in good standing.
>
> (b) The employee shall be properly notified of the action by personal service or certified mail as provided by regulation. The appointing authority shall report the resignation to the Department of Civil Service."[5]

[5] This section was amended effective February 1, 1972 to require notice of the action and the opportunity for a departmental hearing. Thus this new regulation insures that what was done to petitioner can never be done again to another Civil Service employee.

Thus it contained no due process safeguards requiring notice of charges and a departmental hearing. This section is a non-disciplinary section used for administrative bookkeeping to clear payroll records when an employee cannot be found.[6]

The rehearing regarding the legality of petitioner's removal again repeated the mistake committed at the first Civil Service hearing. After agreeing that allegations made by the Probation Department of insubordination and neglect of duty were irrelevant (August 8, T 75-4), the hearing officer then went on to focus on the same irrelevant matters, matters with which the petitioner had not been charged (August 8, T 14-21; T 99-24; T 101-12; T 102-18; T 105-7; T 106-6; T 108-24; T 113-9; T 119-24; T 175-10; T 183-13; August 15, T 9-8; T 19-14; T 57-18; T 12-6; T 43-15; T 20-15; T 29-1; T 38-22; T 41-20; T 42-17; T 57-14).

The hearing officer's report was filled with inaccuracies which reflected his misunderstanding of what the issue before him was. He had no idea as to the burden of proof in the hearing (August 8, T 3-8; T 10-23; T 13-5; T 155-13); nor any idea as to the distinction and differences in procedures in disciplinary and non-disciplinary Civil Service hearings (T 14-21). The hearing officer refused to allow expert testimony to help him determine the basis of the appeal and forbade inquiry into the motivation of the Chief Probation Officer who removed petitioner (T 62-17 to T 68-4; T 209-1 to T 211-19). He was unfamiliar with the applicable rules of procedure or what rules were non-disciplinary in nature.

The action of the hearing officer was upheld in a determination of the Civil Service Commission on appeal on March 3, 1975.

[6] At the first Civil Service hearing the County stated the authority for removal was N.J.A.C. 4:1-17.23.

Petitioner then filed an appeal to the Superior Court of New Jersey, Appellate Division, claiming that his removal based upon N.J.A.C. 4:1-16.14 was in violation of due process. The Appellate Division, without adducing any further testimony or holding a hearing as to the specific allegations of insubordination and neglect of duty ruled that under the circumstances petitioner's conduct "should be" regarded as insubordination and that petitioner should be suspended for a period of six months without pay rather than being removed permanently from his position of employment. In so doing, the Appellate Division overlooked the only issue that was ever before the Civil Service hearing officers, namely whether petitioner could legally be removed by way of the letter dated March 30, 1970, and it further failed to reach the issue whether a proceeding under N.J.A.C. 4:1-16.14 was itself violative of due process. Rather, the Appellate Division on its own initiative assumed that petitioner "should have" been charged with insubordination and neglect of duty and then without giving any notice or holding any hearing or allowing petitioner to introduce evidence to refute these very specific charges, adjudged petitioner guilty and entered the opinion and Order that is the subject of this petition. This action by the Appellate Division was predicated upon irrelevant, immaterial and prejudicial testimony that was allowed at the Civil Service hearing. In fact, petitioner had never been charged at all with any violation of the Civil Service regulations, his removal being effectuated simply by receipt of a letter stating that he had been removed.

Petitioner raised his due process argument at every level of the proceedings. In the Appellate Division, petitioner raised this question as a specific point on appeal. In response to petitioner's contention that he had been denied due process by the manner in which he was removed from,

and then kept out of, Civil Service, the Appellate Division wrote:

> "We have further noted and considered additional contentions advanced by appellant. To the extent they have not been subsumed in our determination they have been found lacking in sufficient merit, collectively, as well as independently, to warrant a reversal of the determination of the Civil Service Commission."

Petitioner's petition for a writ of certification to the Supreme Court of New Jersey, which included the issue of the denial of due process, was denied without opinion on September 23, 1976.

ARGUMENT

POINT I

Petitioner's rights of due process of law were violated by the manner in which he was removed from his position as a permanent Civil Service employee.

A. Petitioner was removed without notice and without a departmental hearing.

It is axiomatic in our system of jurisprudence that before an interest or property right encompassed by the Fourteenth Amendment's protection of liberty and property may be taken, notice and an opportunity to be heard are mandated. *Board of Regents* v. *Roth,* 408 US 564 (1972); *Arnett* v. *Kennedy,* 416 U.S. 134 (1974); *Goss* v. *Lopez,* 419 U.S. 565 (1975); *Wisconsin* v. *Constantineau,* 400 U.S. 433 (1971); *Groppi* v. *Leslie,* 404 U.S. 496 (1972);

Fuentes v. *Shevin,* 407 U.S. 67 (1972). The notice and hearing safeguards of due process must be employed at a time when the deprivation can still be prevented; no later hearing and no damage award for wrongful deprivation can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. *Fuentes* v. *Shevin supra.*

In the case *sub judice* petitioner was terminated from his position of employment and removed as a permanent Civil Service employee merely by being sent a letter from William F. Mulligan, the Chief Probation Officer, which was dated March 30, 1970. The letter reads as follows:

"Dear Mr. Longhi:

Your failure to report to the Johnson Avenue branch of the Essex County Probation Department for reassignment as directed constitutes an absence without leave. Therefore, your name has been removed from the payroll as of March 23, 1970.

Very truly yours,

William F. Mulligan"

This self-executing letter did not afford petitioner notice nor an opportunity for a departmental hearing to defend himself.

The pertinent state law and Civil Service regulations regarding the removal of employees reads as follows:

"N.J.S.A. 11:15.2—Causes for removal after working test (probationary) period

The commission shall enumerate in its rules the reasons which shall be considered just cause for the removal of a permanent employee in the classified service after the completion of the working test period, and prescribe by rule a procedure based upon this section and sections 11:15-3 to 11:15-6 of this title and in accordance therewith for handling such removals."

"N.J.S.A. 11:15-3—Form for enumerating causes of removal

The commission shall cause to be prepared and distributed among the appointing authorities a form on which any appointing authority removing any employee shall enumerate the cause or causes as set forth in the rules of the commission of other cause which constitutes the ground for removal and the act of the employee constituting such cause. The form when completed shall be delivered to the removed employee and a copy thereof forthwith delivered to the commission."

"N.J.A.C. 4:1-16.8(a)—Removal

(a) A permanent employee in the classified service may not be removed except for just cause upon written charges. Notice of the removal shall be sent to the employee on the form prescribed by the Civil Service Commission and a copy of said notice shall be sent to the Civil Service Department at the same time."

"N.J.A.C. 4:1-16.10—Hearing on causes for removal

The Civil Service Commission shall grant a hearing on the causes for removal if the employee sought to be removed appeals to the Commission for such a hearing as prescribed in Section 5.3 (Time for filing request) of this Chapter. The Commission in its decision may revoke or modify the action of the appointing authority."

In accordance with Civil Service procedure petitioner, in the event there was justification, should have been served with a prescribed form which would have specified the charge against him and which would have set a departmental hearing date, at which time the charge and his defenses thereto would have been heard. The letter of termination in no way conformed to this procedure and in no way satisfied minimal due process requirements.

B. The use of N.J.A.C. 4:1-16.14 by the Probation Department in seeking petitioner's removal at the rehearing denied petitioner due process of law. Removal proceedings under Rule 4:1-16.14 are violative of due process.

The rules of Civil Service provide for two methods of dealing with unauthorized absences.

N.J.A.C. 4:1-16.14—Resignation resulting from unauthorized absence, provides:

> "Any employee who is absent from duty for five consecutive business days without notice and approval of his superior of the reason for such absence shall be held to have resigned not in good standing."

Rule 4:1-17.23—Absence without leave, provides:

> "Any unauthorized absence of an employee from duty shall be an absence without leave and is cause for disciplinary action."

N.J.A.C. 4:1-17.23 provides an employee with the full plenoply of safeguards afforded under fundamental notions of fairness and due process; it provides for the imposition of penalties responsive to the degree of culpability (N.J.A.C. 4:1-16.7); it provides for notice of

charges (N.J.A.C. 4:1-16.8) and the right to a departmental hearing within thirty (30) days (N.J.A.C. 4:1-5.15); and it provides for appeal to Civil Service for redress (N.J.A.C. 4:1-16.10).

N.J.A.C. 4:1-16.14 affords no hearing, no notice of charges, no discretionary range of penalties which may be imposed.[7]

If abused by appointing authority, under N.J.A.C. 4:1-16.14, any permanent Civil Service employee can be deprived of his position, his salary, his Civil Service Status and benefits merely by sending him a letter. This is exactly what was done in the instant case. That was hardly the intent of the Civil Service Law to allow appointing authorities to use 16.14 for removal purposes: to permit the complete by-pass of Civil Service due process at the arbitrary whim of the employer.

To punish a civil servant under N.J.A.C. 4:1-16.14 is, in effect, to deprive him of his due process rights under N.J.A.C. 4:1-17.23. This could not have been the intent of 4:1-16.14. It must have another purpose, and it does, an administrative bookkeeping one, to be used to clear payroll records when an employee cannot be found.

The precise issue of whether proceeding under N.J.A.C. 4:1-16.14 instead of 4:1-17.23 constitutes a denial of due process was raised but not decided in *Jones* v. *Department of Civil Service,* 118 N.J. Super. 323, 287 A. 2d 463 (Appellate Division, 1972). The Court found that based upon the facts of that case it was not necessary

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[7] It was not until the rehearing that the Probation Department envoked 16.14 so that its failure to give notice of charges and a departmental hearing could be excused as not being a necessary procedural step in petitioner's removal.

to reach the question. The Court did comment, however, that:

> "*The underlying philosophy* of the Civil Service Act, N.J.S.A. 11:1-1 set seq., is to advance the welfare of the public and to protect permanent employees in the classified service *by preventing their removal except for cause after due notice and hearing.*" *Mason* v. *Civil Service Commission,* 51 N.J. 115, 238 A. 2d 161 (1968).

This strongly indicates how the Court would have decided the issue.

It is respectfully submitted that the action letter of the Probation Department in the instant case has been improper and illegal in that it has relied on a vehicle (N.J.A.C. 4:1-16.14) whose application to the facts of the instant case results in an irrational abberation in the Civil Service scheme, and the use of this Rule by the Essex County Probation Department has deprived the petitioner of his due process rights.

Such a procedural device as used by the Essex County Probation Department and countenanced by the Department of Civil Service cannot stand in the wake of recent decisions by this Court that before any right encompassed by the Fourteenth Amendment may be taken, notice and a hearing are required, if a State has already as a matter of procedure provided such safeguards. Here the State of New Jersey, both by statute and regulations, has mandated that a tenured civil servant cannot be removed except upon just cause after a hearing brought on by written notice of charges. *Connell* v. *Higginbotham,* 403 U.S. 207 (1971); *Fuentes* v. *Shevin,* 407 U.S. 67 (1972). The right of employment as a tenured civil servant, the right to earn a living, are just such rights that are protected. *Goss* v. *Lopez,* 419 U.S. 565 (1975); *Board of Regents* v. *Roth,* 408 U.S. 564 (1972); *Willner* v. *Committee on Character,* 373 U.S. 96 (1963). In the instant case, petitioner was a tenured civil servant and had an acquired interest in his position of employment. Thus he is safeguarded by procedural due process and may not be terminated from his acquired interest except through notice and after a hearing on the merits. *Slochower* v. *Board of Education,* 350 U.S. 551 (1956); *Weiman* v. *Updegraff,* 344 U.S. 183 (1952); *Connell* v. *Higginbotham, supra.*

POINT II

The decision of the Superior Court of New Jersey, Appellate Division, that petitioner's conduct should be regarded as insubordination and the imposition of a six-month suspension by that Court violated petitioner's rights to due process.

A fair trial in a fair tribunal is a basic requirement of due process. *Groppi* v. *Wisconsin,* 400 U.S. 505 (1971). The constitutional requirements of an opportunity for some form of hearing before deprivation of an interest encompassed by the Fourteenth Amendment's protection of liberty and property does not depend upon any narrow balancing process. *Board of Regents* v. *Roth,* 408 U.S. 564 (1972).

In the instant case petitioner never was afforded a departmental hearing on the charge of insubordination, the charge for which the Appellate Division imposed a six-month suspension. Indeed, petitioner was never given notice of a charge of insubordination, and thus never had

the opportunity to defend himself.[8] Therefore, petitioner's suspension based on a charge of which he was never given notice of or an opportunity to be heard at a departmental hearing is a manifest violation of due process.

The opinion of the Appellate Division clearly shows that it employed a balancing test, taking into consideration the length of time that had elapsed since the original illegal removal action was taken against petitioner, and balancing this time lapse factor against petitioner's constitutional right not to be removed except for just cause after a hearing.

While the Appellate Division's approach may have saved the State the time and expense of remanding this matter to the Civil Service Commission for a hearing on the specific charge of insubordination, it also clearly violated petitioner's rights.

The effect of the Appellate Division's action was to forever stigmatize the petitioner with the charge of insubordination without allowing the petitioner to rebut the allegations at a departmental hearing. In addition, by adjudicating petitioner guilty of insubordination on its own initiative, the Appellate Division foreclosed petitioner from any viable opportunity to appeal. Had this matter been remanded to the Civil Service Commission for a hearing, and had petitioner been found guilty of insubordination, he would have still had the right to appeal this determination, first within the structure of Civil Service and then to the Superior Court of New Jersey, Appellate Division. However, these avenues of redress became closed to petitioner because the Appellate Division amended the charge against petitioner without notice and then adjudicated him guilty without a departmental hearing. Petitioner had no right to appeal from the decision of the Appellate Division.

[8] Insubordination is a specific charge that can be used as a cause for removal (N.J.A.C. 4:1-16.9). In order to employ this charge, however, first notice of the charge must be given and a hearing held.

The record relied upon by the Appellate Division to sustain its opinion was the record made by petitioner on his appeal to Civil Service to challenge the validity of his removal by the letter of March 30, 1970. At no time was petitioner ever charged with insubordination or any other charge, and the document of record with Civil Service is the removal letter of March 30, 1970.

The focus of the Appellate Division on what should have been the proper charge against petitioner was improper. No question was raised below as to what should have been the charge. The only issue under consideration was whether petitioner's removal from Civil Service, by way of a letter, without notice of or a departmental hearing on any charge, was valid or invalid.

The due process clause of both the Federal and State Constitutions, indeed the Civil Service statutes and regulations themselves, are all clear in decreeing that what was done to petitioner was improper and illegal.

POINT III

The Essex County Probation Department and the Superior Court of New Jersey, Appellate Division, illegally punished petitioner for exercising his right to Freedom of Speech.

On May 5, 1969 a series of meetings commenced between State and County officials, documented by reports from Essex County Council and Essex County Planning Board, which favored the autonomy of the Essex County

Narcotics Clinic from the structure of the Probation Department. In this regard, Freeholder-Director Augenblich recommended that a white paper report expressing the rationale for clinic autonomy be submitted to him by Mr. Longhi.

On March 17, 1970 this white paper was submitted to Freeholder-Director Stabile, who had succeeded Freeholder-Director Augenblich. A copy thereof was given by Longhi to Mr. Mulligan on the afternoon of March 17, 1970 at 2:00 p.m. At 3:00 p.m. Mr. Longhi had been relieved of his duties as Clinic Director, effective 9:00 a.m. March 18, 1970. Mr. Longhi's name was removed from the payroll effective March 23, 1970.

Mr. Longhi's views on autonomy were adopted by the Essex County Board of Freeholders by resolution dated May 14, 1970. Shortly thereafter, as a result of Mr. Longhi's efforts, all County Clinics, including the Essex Clinic, were brought under the structure of the State Department of Health.

Mr. Mulligan's actions in transferring Mr. Longhi and having him removed summarily from the payroll was vindictive and a punishment for Mr. Longhi's expressing his opinion.[9] These actions constituted a violation of Mr. Longhi's First and Fourteenth Amendment rights.

Prior to the submission of the white paper report, Mr. Mulligan had praised petitioner for his efforts in establishing innovative methods for treating drug patients (T 197, 19-25).

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[9] The vindictiveness was compounded by Mr. Mulligan attempting to file through Civil Service late charges, two and one-half months after petitioner had already been removed, in an attempt to justify procedurally the illegal removal.

The cause and effect relationship between the submission of the paper and the summary removal is obvious, especially in light of the time sequence in which the events transpired. Removal from public employment may not be predicated on an employee's exercise of First and Fourteenth Amendment rights. *Weiman* v. *Updegraff*, 344 U.S. 183 (1952); *Slochwer* v. *Board of Education, supra; Winston* v. *Board of Education of Borough of South Plainfield,* 125 N.J.Super. 131, 309 A. 2d 89 (Appellate Division, 1973); *Jannetta* v. *Cole,* 493 F. 2d 1334 (5th Cir. 1974); *Donahue* v. *Staunton,* 471 F. 2d 475 (Cir. 1972) cert. den. 410 U.S. 955 (1973).

Mr. Mulligan described the relation between the submission of the white paper report at 2:00 p.m. and petitioner's removal from the Clinic Directorship one hour later as a "coincidence" (August 8, T 190-20). The County, however, did not produce any credible evidence which would establish the existence of any chain of events independent of the submission of the white paper report which would have triggered petitioner's removal at 3:00 p.m. There was no testimony that Mr. Mulligan had taken any steps prior to 2:00 p.m. which would have led to petitioner's removal at 3:00 p.m. or at any other time. In fact, up to that time Mr. Mulligan had described petitioner as doing an "outstanding job" (August 8, T 191-14). The only established facts are that at 2:00 p.m. petitioner submitted the white paper and at 3:00 p.m. he was removed as Director. There is one and only one logical inference between the facts and that is that they exist in a cause and effect relationship.

Petitioner's criticism in his report of the relationship between the drug clinic program and the County Probation Department was taken as a criticism of government

administration. Every free man has a right to make fair comment upon and criticism of the government. It happened that those in the administration disagreed with his views. One short hour after submitting the report, whose effect but not intention was a criticism of those personnel above him, petitioner was relieved of his duties. He was transferred, and five days after the transfer he was summarily removed from the permanent Civil Service without being given notice, without a departmental hearing and without due process. The retaliatory aspects of this scheme cannot be disguised. The opinion of the Appellate Division equally violated petitioner's First Amendment right to Freedom of Speech by categorizing petitioner's exercise of this right as "insubordination". The testimony relied upon by the Appellate Division to justify petitioner's suspension for insubordination was simply that petitioner sent a report to the Essex County Board of Chosen Freeholders that made a recommendation which irritated and annoyed his superior. So dear and cherished a right as the right to speak one's own opinion cannot be traded off against the bureaucratic or managerial goal of blind loyalty to one's superiors. By characterizing petitioner's action as insubordination, the Appellate Division struck a clear warning to all civil servants that to express one's views while in governmental employ is dangerous. This "chilling effect" cannot be denied. In petitioner's case a punishment of a six month suspension was imposed.

POINT IV

The inexcusable delay in affording petitioner a Civil Service hearing is in itself a denial of due process.

Six and one-half years after the petitioner was illegally and summarily stripped of his permanent Civil Service position as Senior Probation Officer serving as Director of Essex County Narcotic Clinic, without due process or in conformity with Civil Service rules, he is still attempting to get a fair determination of the original and only issue in his case—the illegality of his removal from the Civil Service as a result of a letter received from the Probation Department.

First, for over seventeen months after petitioner was illegally removed and filed his request challenging his removal, the Civil Service Commission did not afford him a hearing. This despite the fact that he was removed from the Civil Service, stripped of his Civil Service status and benefits, and was unemployed during the entire period.

He filed his original request for a Civil Service hearing on April 10, 1970. He was not given a hearing until November 30, 1971, a delay of over seventeen months. Civil Service regulations 5-6.101b, Assignment, provides that employees who have been removed from Civil Service shall be given first priority in assignment of hearings. It is apparent the delay here was a blatant disregard of Civil Service rules and shows that Civil Service received the appeal on April 10, 1970, did not acknowledge its receipt until September, and via internal memoranda admitted its administrative ineptness, and then publicly attributed the delay to a "hearing backlog". The Civil Service Commission at this point had a vested interest in covering up its own error and therefore in affirming the County's patently illegal act.

This delay is in itself inexcusable and demands that the petitioner be fully reinstated without penalty. The rapidity of administrative review is a significant factor in assessing the constitutional sufficiency of the entire process. *Fusari* v. *Steinberg,* 419 U.S. 379 (1975). Here the administrative review did not start for seventeen months and the entire process is still going on. It is a cardinal principle of law that justice delayed is justice denied.

However, other injustices suffered by petitioner also were responsible in protracting the matter.

Petitioner was never charged under Civil Service rules. Had the petitioner been properly charged according to Civil Service procedure in the first place, he would have received a departmental hearing within thirty (30) days pursuant to 4:1-5.15. Instead the violation of petitioner's rights to due process made possible the violation of his right to a speedy determination of the illegality of his removal. Petitioner was not afforded any hearing for over seventeenth months and then only after he had petitioned that he be given one.

The hearing was held on November 30, 1971 and yet the hearing officer's report did not issue until January 31, 1972. The Civil Service regulation R 5-6 101d provides for issuance of the hearing officer's decision within twelve days after completion of the hearing. So again there was an illegal delay in violation of Civil Service rules.[10]

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[10] If petitioner had not applied for relief under N.J.A.C. 4:1-5.3, his Civil Service record would have shown his cause of removal as resignation under 16.14, a non-disciplinary action. After six and one-half years the Civil Service record reflects a disciplinary six-months suspension. Thus petitioner has been punished more severely than had he not pursued his rights.

The rehearing was requested on October 5, 1972 and granted on January 9, 1973, a delay of over three months. The matter was set for rehearing on September 12, 1973. After the rehearing began the respondent, Essex County Probation Department, insisted on introducing evidence of uncharged, irrelevant acts of alleged misconduct and the Civil Service Commission decided to allow such evidence to be presented (another three-month delay). Four months later on January 7, 1974 the hearing officer decided to admit into evidence all acts of uncharged alleged misconduct. Petitioner was forced to appeal to the Civil Service Commission as a whole on April 23, 1974. The Commission, after one month, on May 24, 1974, affirmed the hearing officer's decision. On May 24, 1974 he appealed to the Appellate Division on this ruling which dismissed the appeal. This lasted until July 12, 1974.

When the hearing was finally held on August 8, 1974 and August 15, 1974 the hearing officer's report did not issue for three months, until November 15, 1974. Another three months, and again a violation of the twelve-day rule R 5-6.101d.

Petitioner appealed to the Civil Service Commission as a whole on December 10, 1974 and the Commission reached a decision on January 21, 1975—a month and a half later—which was not reported to petitioner until March 3, 1974—another month and a half. The epic report was one page long and contained no independent findings.

The petitioner has waited over six and one-half years to have the matter disposed of. It should have taken thirty days. The petitioner has been forced to expend much time and effort in order to vindicate himself from a removal which was patently unfounded and procedurally improper.

Delay has followed delay, many delays in patent disregard of Civil Service's own rules. It is not unreasonable to suggst that many of the long and repeated delays were deliberately created by the Civil Service Commission and the County of Essex, or to suggest that delay has been used as a weapon against the petitioner in an effort to exhaust his moral and material resources. Such conduct is inexcusable. It cannot be condoned. It requires a granting of a writ of certiorari to review this conduct.

CONCLUSION

For the foregoing reasons, the petitioner, Lawrence V. Longhi, respectfully submits that the petition for writ of certiorari be granted.

Respectfully submitted,

ROBERT J. CITRINO, JR.,
Attorney for Petitioner.

HARRY ROBINSON, III,
On the Petition.

APPENDIX A

Order of the New Jersey Supreme Court Denying Petition for Certification

SUPREME COURT OF NEW JERSEY
C-97 SEPTEMBER TERM 1976

LAWRENCE V. LONGHI,
Appellant-Petitioner,

vs.

ESSEX COUNTY PROBATION DEPARTMENT, *et al.*,
Respondents-Respondents.

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 23rd day of September, 1976.

FLORENCE R. PESKOE
Clerk

APPENDIX B

Opinion and Judgment of the Supreme Court of New Jersey, Appellate Division

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-2271-74

LAWRENCE V. LONGHI,

Appellant,

v.

ESSEX COUNTY PROBATION DEPARTMENT
and DEPARTMENT OF CIVIL SERVICE,

Respondents.

Argued February 17, 1976—Decided May 17, 1976

Before Judges Carton, Crahay and Handler.

On appeal from the Civil Service Commission.

Mr. Frank H. Reimers argued the cause for appellant (Citrino, Balsam & Ford, attorneys; Mr. Robert J. Citrino, Jr., of counsel).

Mr. Joseph C. Glavin, Assistant County Counsel argued the cause for respondent Essex County Probation Department (Mr. Francis Patrick McQuade, Essex County Counsel, attorney, Mr. Maurice R. Strickland of counsel).

Appendix B

A Statement in Lieu of Brief was submitted on behalf of Civil Service Commission by Mr. William F. Hyland, Attorney General, attorney: Erminie L. Conley, Deputy Attorney General of counsel and on the statement.

PER CURIAM

Appellant, Lawrence Longhi, appeals from the determination of the Civil Service Commission affirming his removal from his position with respondent Essex County Department under N.J.A.C. 4:1-16.14. This rule provides that an authorized absence from duty for five consecutive days shall constitute a resignation "not in good standing."

Appellant was employed by the Essex County Probation Department as a Senior Probation Officer. His job was Director of the Essex County Narcotics Clinic, which was administered by the County Probation Department but funded by the State.

It appears that by early 1970 Longhi had become involved in a dispute with William Mulligan, the Chief Probation Officer, over the operation and policies of the Clinic. Their controversy involved the issues of whether the Clinic was serving enough probationers in that it was handling addicts who were non-probationers, and whether there was an obligation to report to the prosecutor's office addicts who voluntarily sought treatment. On March 17, 1970 Longhi submitted to the Director of the Essex County Board of Chosen Freeholders a report, written at the Board's request, explaining reasons for making the Clinic independent of the Probation Department. A copy was submitted to Mulligan. One hour later, Mulligan relieved

Longhi of his duties as Director of the Clinic, effective the next morning.

A few days later, by letter dated March 20, Mulligan transferred Longhi to another branch office (Johnson Avenue) of the Probation Department and out of the Clinic, such transfer to be effective March 23. During the week of March 23, however, Longhi, continued to work at the Clinic. On March 30, therefore, Mulligan informed Longhi again by letter, that his failure to report for reassignment as directed constituted absence without leave and that his name had been removed from the payroll as of March 23.

Longhi took the position that he had been authorized by the Coordinator of the Drug Abuse Program of the State Department of Health to remain on the job at the Clinic and not to leave that job until a successor had taken over. It is noted, however, that Mulligan's letter of March 17 relieving Longhi of his duties as Clinic Director also designates and appoints an acting director.

Mulligan recognized that Longhi, who had been with the Department almost 12 years, had started the Clinic and had done outstanding work. He testified that Longhi's removal on the day his report to the Freeholders was submitted was "strictly a coincidence" and that he personally had little interest in whether the Clinic was or was not removed from his Department's jurisdiction. Mulligan stated that appellant was removed from the Clinic so that the Clinic could be investigated to determine why so few probationers were being served by it.

We hold, under the circumstances, that appellant's conduct should be regarded as insubordination rather than resignation and that the sanction of removal by the appointing authority was unduly harsh and constituted

disproportionate punishment. We therefore modify the determination below with respect to the penalty.

The hearing examiner recognized that appellant's actions constituted insubordination and that the circumstances were amenable to charges of insubordination under N.J.A.C. 4:1-16.9. We agree. Clearly, what was here involved was simply insubordination, the refusal of a subordinate employee to comply with the order of a superior. Nevertheless, because of the specific form of charge brought by the appointing authority the hearing examiner treated that conduct of appellant as an absence from duty without notice and approval contrary to N.J.A.C. 4:1-16.14 (a). In our view, the appointing authority should have dealt with the dereliction of appellant as disobedience and considered other flexible forms of disciplinary action. N.J.A.C. 4:1-16.9; N.J.A.C. 4:1-17.23. In that posture it would not be required to regard the actions of appellant, *a priori,* as an absence without approval mandating automatic resignation and removal.

In this context, the insubordination of appellant being established by sufficient credible evidence reflected in the entire record, the issue is whether the penalty of removal is just and proper under all the circumstances. *Mayflower Securities Co., Inc.* v. *Bureau of Securities,* 64 N.J. 85 (1973); see *Knoble* v. *Waterfront Comm'n of New York Harbor,* 132 N.J. Super. 151 (App. Div. 1974), rev'd, 67 N.J. 427 (1975). Though, as noted, appellant was undoubtedly guilty of insubordination in refusing to obey Mulligan's order reassigning him to the Johnson Avenue Branch, Longhi appears to have been acting upon reasons addressed to the welfare of the patients of the Clinic. From the record it appears that his action was prompted by a good faith belief that it was necessary for his pa-

tients that he remain at the Clinic until its services to them could be phased out slowly. These factors do not, of course, excuse disobedience. They may serve, however, to mitigate punishment. When there is added the considerations that Longhi had been instrumental in founding the Clinic, was credited with outstanding service and had served without fault for twelve years prior to this single episode, it is appropriate that a penalty no greater than a suspension without pay for a period of six months and an appropriate reprimand be imposed.

We have further noted and considered additional contentions advanced by appellant. To the extent they have not been subsumed in our determination they have been found lacking in sufficient merit, collectively, as well as independently, to warrant a reversal of the determination of the Civil Service Commission.

In view of the unduly prolonged and scrambled course of this litigation with the inevitable complications wrought by the long passage of time, we do not believe it to be in the interests of justice to remand this matter for further proceedings addressed soley to the issue of penalties. In accordance with the views here expressed, the determination of the Civil Service Commission is modified; it is directed that an order be entered suspending appellant from his employment for a period of six months without pay with an appropriate reprimand. With respect to the question of salaries improperly withheld during the pendency of these proceedings, as a result of this determination, the principle of mitigation shall be applied.

Accordingly, the judgment below is affirmed in part and modified in part.

APPENDIX C

Decision of the Civil Service Commission as a Whole

STATE HOUSE, TRENTON—TELEPHONE 292-4150

Issued: March 3, 1975

For Release: Friday, 3-7-75
— P.M. Papers

DECISION ON APPEAL OF LAWRENCE V. LONGHI

The appeal of Lawrence V. Longhi, Senior Probation Officer, Probation Department, Essex County, from his removal effective March 23, 1970, for being absent without leave, was brought on for hearing on September 12, 1973, August 8, and August 15, 1974, at Newark, New Jersey, before Hearing Officer Anthony P. Spirito, who rendered his report and recommendation on November 15, 1974.*

Hearing on the above appeal had previously been held and a decision rendered on January 13, 1972, said decision upheld the removal and dismissed the appeal of Mr. Longhi. The Civil Service Commission on January 9, 1973 considered the parties' briefs and directed that the appeal be reopened and granted Mr. Longhi a new hearing in order to correct a legal error in the burden of proof which was apparent on the face of the decision of January 13, 1972, and also in order to afford Mr. Longhi an opportunity to be represented by counsel.

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* Exceptions were filed in time by Robert J. Citrino, Jr., Esq. on behalf of Lawrence Longhi. No cross exceptions were filed within the prescribed time.

Appendix C

Having considered the record and the Hearing Officer's report and recommendation issued thereon, and based upon the record herein, and having made an independent evaluation of the same, the Civil Service Commission, at its meeting on January 21, 1975, accepts and adopts the Findings of Fact and Conclusion as contained in the attached Hearing Officer's report and recommendation.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing appellant, Lawrence V. Longhi, was justified. The Commission therefore affirms the action of the appointing authority and dismisses the appeal of Lawrence V. Longhi.

DECISION RENDERED BY THE CIVIL SERVICE COMMISSION ON JANUARY 21, 1975.

I hereby certify that the above is a true copy of the original which appears in the official record of the Civil Service Commission.

William Druz
Chief Examiner and Secretary
Department of Civil Service

Mr. Longhi resides at 94 Sycamore Avenue, Livingston, New Jersey

APPENDIX D

Hearing Officer's Report and Recommendations, November 15, 1974

The Appeal of Lawrence V. Longhi, Senior Probation Officer, Probation Department, Essex County, on the question of his removal of March 23, 1970, for being absent without leave failed to report to the Johnson Avenue Branch of the Essex County Probation Department for re-assignment as directed, was brought on for hearing on September 12, 1973; August 8, and August 15, 1974, at Newark, New Jessey, before Hearing Officer Anthony P. Spirito, who rendered his decision on November 15, 1974.

APPEARANCES:

MESSRS. CEREFICE AND CEREFICE
By: Louis R. Cerefice, Esq., For Essex County

STRICKLAND, MAYSON AND MCDONALD, ESQS.
By: Maurice R. Strickland, Esq., For Essex County

MESSRS. CITRINO, CARELLA, BALSAM AND FORD, ESQS.
By: Robert J. Citrino, Jr., Esq.
By: Thomas S. DiBiasi, Esq., Attorneys for Appellant

The following witnesses were called:

John R. Collins

Lawrence V. Longhi

Rodger Colonna

William F. Mulligan

Edward Zirkel

Appendix D

Archibald D. McAllister
Muriel A. Crowley

The following exhibits were received in evidence:

A-1 Letter dated August 5, 1974
A-2 Letter dated May 20, 1974
A-3 Letter dated September 24, 1974
A-4 Letter dated October 6, 1974
A-5 Letter dated January 22, 1973
A-6 Letter dated March 30, 1970
A-7 Letter dated December 29, 1972
A-8 Letter dated June 2, 1970
A-9 Letter dated May 27, 1970
A-10 Letter dated March 13, 1970
A-11 Letter dated March 17, 1970
A-12 Letter dated April 9, 1970
A-13 Letter dated April 9, 1970
A-14 Letter dated March 30, 1970
A-15 Letter dated August 14, 1974
R-1 Letter dated June 1, 1970
R-2 Letter dated March 18, 1970
R-3 Letter dated March 17, 1970

Appendix D

DISCUSSION

On November 30, 1971, the Appeal of Lawrence V. Longhi, Senior Probation Officer, Essex County, on his removal for being absent without leave in that he failed to report to the Johnson Avenue Branch of the Essex County Probation Department for reassignment as directed, was heard before the Hon. Anthony J. Statile. At that hearing, Louis R. Cerefice, Esq. represented the Essex County Probation Department and the appellant, Lawrence V. Longhi appeared pro se. The decision of the Commission at that time was that the Essex County Probation Department was correct in suspending the appellant. It was stated in the conclusion that the Hearer cannot find any credible testimony to the effect that the appellant was not insubordinate nor negligent in his duty as a Senior Probation Officer. One of the findings of fact was that the allegations of insubordination and neglect of duty must be accepted as being true because the appellant failed to disprove the charges. On January 22, 1973, Mr. William Druz, Chief Examiner and Secretary of the State Civil Service Commission notified Mr. Cerefice that the Commission at its meeting on January 9, 1973, after consideration of the Briefs of the parties, decided to re-open the Appeal of Lawrence V. Longhi, from his removal from his position of Senior Probation Officer, Probation Department, Essex County, effective March 23, 1970, for being absent without leave. The Commission granted Mr. Longhi a new hearing in order to correct legal error in the burden of proof which is apparent on the face of the decision of January 13, 1972, and also in order to afford appellant an opportunity to be represented by counsel.

Appendix D

This matter was assigned to this Hearer and the re-hearing of the Appeal of Lawrence V. Longhi began on Wednesday, September 13, 1973. At that time Louis R. Cerefice, Esq. represented the Probation Department of Essex County and Messrs. Citrino, Carella, Balsam and Ford, Esqs., represented the appellant. At that hearing on Wednesday, September 12, 1973, the attorneys for the appellant claimed that the hearing should be solely based upon the charge of being absent without leave. Thus, any evidence with respect to additional charges of insubordination and neglect of duty should not be heard at the re-hearing of the appeal. This Hearer, on January 7, 1974, by letter opinion to the attorneys involved, decided that at the continuation of the re-hearing all evidence with respect to the appellant's alleged acts of insubordination and neglect of duty would be admitted into evidence.

Two more hearings were held on August 8, 1974, and August 15, 1974. At that time the attorney for the Appointing Authority was Maurice R. Strickland, Esq., and the attorneys for the appellant were Robert Citrino, Jr., Esq. and Thomas S. DiBiasi, Esq. At the hearing on August 8, 1974, Mr. Citrino, the Attorney for the appellant advanced the following arguments:

1. That the only issue before this Hearing Officer is whether Mr. Longhi was absent without leave.

2. That the burden of proof is upon the appellant, Mr. Longhi, and therefore the appellant should be allowed to proceed first at this hearing.

3. This is not a disciplinary hearing.

4. N.J.A.C. 4:1-16.14 (a) is a procedural statute that is used to terminate a person if for any reason they are absent from duty for five consecutive business days.

Appendix D

5. The appellant, Mr. Longhi, has never had a departmental hearing, was never served with Civil Service forms 31A and 31B, and therfore no procedural due process has been afforded the appellant.

6. Whether the appellant is charged with a violation of Section 4:1-16.14 (Resignation resulting from unauthorized absence) or 4:1-17.23 (Absence without leave).

7. An objection was made by counsel for the appointing authority.

At this point of the hearing, Mr. John R. Collins was called as a witness on behalf of the appellant. Mr. Collins an employee of the Civil Service for 19 years, is a Supervising Principal Personnel Technician. In that capacity, Mr. Collins has to be responsible to advise and to assist appointing authorities and employees with respect to Title 11, and conduct classification services and supervise people. Mr. Collins testified that the appellant was charged with 4:1-16.14, which was the former Rule 60. Mr. Citrino stated that there was no departmental hearing, we're not saying that there had to be one on the issue of absence without leave.

There was an internal error with respect to the documents in the file, and his response to what that internal error was is as follows:

Mr. A. R. Mangione, Jr., Director of Municipal Classification, New Jersey Civil Service Commission, informed me today that Lawrence V. Longhi is considered to have been dismissed from the Probation Department as a result of my action in having him removed from the payroll for being absent without leave as of March 23, 1970. Mr. Mangione added that Mr. Longhi has appealed my

procedure and a hearing on his appeal is pending. Therefore, Mr. Mangione concludes the hearing on charges of insubordinaion and neglect of duty scheduled for June 3, 1970, should not be conducted.

Mr. Collins further stated that based on what I have so far read into the record, Mr. Longhi had been granted a hearing by the Civil Service Commission for being absent without leave. No further testimony was presented with respect to whether the appeal was from a violation of 4:1-17.23 or an action taken under 4:1-16.14. Based upon the evidence presented to me and an interpretation of the different subsections of N.J.A.C. It was decided that the appellant was charged with a violation of 4:1-16.14 and that the only issue before this Hearer is whether the appellant was absent for five consecutive business days without notice and approval of his superior of the reason for such absence. Said decision with respect to which Section of the New Jersey Administrative Code the appellant is appealing from also resolves the other issues raised by the attorneys for the appellant, and therefore a specific decision on each and every one of them is not necessary at this time.

The appellant, Lawrence V. Longhi, testified in his own behalf and was questioned with respect to his employment background and his employment during the time in question. He stated that he was employed on April 1, 1958, by Essex County, in the capacity of a marriage counsellor. Subequent to April 1, 1958, his title was changed to that of Probation Officer and he was assigned to the criminal section. Mr. Longhi then became a permanent Senior Probation Officer and a liason officer working with the County Court Judge in reviewing sentences. Mr. Longhi's interests focused in narcotic case work, and shortly after

1960 he was directing the narcotics case load for the County Probation Department. In 1968 or 1969, he made application to State Institutions and Agencies for a State funded clinic. Said application and the structure for the clinic were submitted to the Essex County Board of Freeholders and other individuals involved with the Probation Department. Mr. Longhi testified that on March 17, 1970, he was Director of the Essex County Narcotics Clinic, and said Clinic had it offices at 1100 Raymond Boulevard, Newark, New Jersey.

He further stated that he was removed from the Directorship of the Clinic as of March 17th. Testimony was also elicited to the effect that Mr. Longhi was dealing throughout this entire period with State officials as well as County officials, and in fact, he was serving both the County and the State. Mr. Longhi further testified that he specifically asked the question to State officials, "What should I do since receipt of Mr. Mulligan since I was removed from the Directorship of the Clinic?", and they said, "Under no circumstances are you to leave those clients because you have a duty to the other programs other than the probation program." The appellant stated that he did stay at 1100 Raymond Boulevard and reported for work every single day from March 17th until April 9th. On April 1st, the appellant received a notice that he was taken off the payroll effective March 23, 1970, for being abent without leave. According to the appellant, he immediately questioned the whole procedure because he had been a permanent Civil Servant for many years and he knew this was contrary to any operation in Civil Service Rules. On cross-examination Mr. Longhi was unable to remember who his immediate supervisor was, stating, "Well, I had to work two hats, I was Director of the

Essex County Narcotics Clinic, which was a State funded clinic, which I had structured through the Probation Department, and I had the Civil Service title of Senior Probation Officer." He stated that his paycheck was received from Essex County and that he was a County employee. Mr. Mulligan was the appellant's immediate supervisor during his tenure as Director of the Essex County Narcotics Clinic.

After extensive cross-examination, it was elicited from the witness that he submitted two reports—one to the State of New Jersey and one to the County of Essex. Subsequent to receipt of the Notice relieving the appellant of his duties, on or about March 18th or 19th, he had a meeting with his immediate supervisor, Mr. Mulligan. Mr. Longhi further testified that on or about March 20th, he received a memo from Mr. Mulligan transferring him to the Johnson Avenue Branch of the Essex County Probation Department. He further testified that receipt of the letter concerning his transfer was on or before the March 30th letter, which stated that he had resigned resulting from unauthorized absence. In response thereto, Mr. Longhi states that he was working continuously until April 10th at 1100 Raymond Boulevard. Mr. Longhi testified that on or about March 23rd, he spoke with a Mr. Zirkel at the Clinic and he was informed that he had been transferred to the Johnson Avenue Branch and Mr. Longhi's response thereto was that, "I was informed by the State I must remain in that position—to deliver health care to those narcotic addicts who are voluntary and who are not probationers." Mr. Longhi testified that he did not report to the Johnson Avenue Branch although his transfer was effective March 23rd. He specifically states that he was instructed not to report by State Officials.

The one specific individual, a Mr. Kawano, was Program Coordinator of the State portion of the Drug and Narcotic Bureau.

The appellant was unable to recall whether a Mr. McAllister or a Miss Crowley were superiors to him in the Probation Office. The witness further testified that in his opinion one of the problems that the State of New Jersey saw with the Essex County Probation Department was in terms of an administrative ambiguity. "There were too many levels of authority coming with and parallel with the State and that white paper did not draw unfavorably to the Probation Department." The appellant testified that on March 20th, 1970, he received the following memorandum: "Office Memorandum of William Mulligan, dated March 18, 1970, to Assistant Chief, Probation Director and Lawrence V. Longhi, Senior Probation Officer. Subject: Transfer, Senior Probation Officer, Longhi is transferred to the Johnson Avenue Branch, effective 9:00 a.m. Monday, March 23, 1970. Mr. Longhi shall report to Assistant Chief Probation Officer, Edward Zirkel, at the above assignment." This is signed by William Mulligan.

In response to questions concerning said notice, the appellant responded as follows:

> Did you receive that?
> Answer: On the 20th?
> You received it on the 20th?
> Answer: I received it on the 20th and I think it was effective on the Monday when it was to take place"

Furhter on, Mr. Longhi stated, "There was no replacement in mind at that point. There was nobody to take the clinic. There was no one assigned or approved by the State,

which is a State policy, and I was left with the decision of going Monday morning and leaving the doors at 1100 Raymond Boulevard closed or empty."

Question: Wasn't your psychologist a member of the staff at that time? Wasn't he there?
Answer: He was under my supervision.
Question: But he was still there on the 20th when you received this? In fact, he was the one who handed you the memo.
Answer: We had a team approach.
Question: He was there; was he not?
Answer: There was not total patient care.

There was testimony also that there were two other people, County employees, who were also there. The appellant felt that he had a moral obligation to remain at 1100 Raymond Boulevard, and in his opinion the program would have to be closed down if he was not present at that location.

Mr. Rodger Colonna, a Psychologist with Seton Hall University Counselling Center was called as the next witness. During March and April of 1970, he was employed by the County of Essex as their Psychologist. His offices were located at 1100 Raymond Boulevard, Newark, New Jersey. Mr. Colonna's immediate supervisor was Lawrence V. Longhi, the appellant in this matter. Mr. Colonna testified that he was aware of Mr. Longhi's activities in attempting to have the narcotic clinic transferred over to the State of New Jersey and he was also aware of the differences and the relationship between Mr. Longhi and the Essex County Probation Department subsequent to the appellant's attempts to alter the structure of the narcotics clinic. The witness testified that he

was aware that Mr. Longhi was relieved as Director of the Clinic on March 17th, 1970. Mr. Colonna confirmed that Mr. Longhi was really staying there because he felt he had an obligation to the people. He was serving the community and he felt certain integrity to the people who were sponsoring him, in a sense, the State.

Upon cross-examination, Mr. Colonna testified that he was an employee of the Essex County Probation Department, and was in that capacity during the month of March, 1970. He further testified that on March 17th, 1970. Mr. Longhi informed him that he received a letter and that he had been terminated. As far as Mr. Colonna could remember about the circumstances surrounding the transfer, Mr. Longhi did not report to any other position or location.

Mr. William F. Mulligan, testified on behalf of the Appointing Authority and stated that his position with the Essex County Probation Department was that of Chief Probation Officer. He further testified that he held that position in March of 1970. Mr. Mulligan testified that the structure of the Probation Department was broken down into two branch offices, each under an Assistant Chief Probation Officer. One of the Branches was at 1100 Raymond Boulevard, and one at Johnson Avenue, there were also several suburban offices in the Bergen communities. In addition to the offices, there were several specialties which were headed by certain individuals. These specialties included an alcoholic program, an employment program, and a narcotic program. The appellant, Mr. Longhi, was in charge of the narcotic program. The individual in charge of these specialties during the year 1970 was a Mr. McAllister. Mr. Mulligan testified that the program was transferred to an East Orange

office in April of 1970. With respect to the serving of the termination notice upon the appellant, Mr. Mulligan stated, "Prior thereto I received a call from Mr. Russo expressing dissatisfaction with the conduct of the program in the Essex County Narcotic Clinic, saying that they weren't serving enough people, and with the amount of money being funded plus the County's contribution, he didn't think it was worthwhile and he was thinking about perhaps changing the whole structure, and setting up the clinic separate from the Probation service, and I was concerned as to what he said as to the numbers of people being serviced in the clinic because I knew that a large percentage of our probation population were narcotic offenders, and why they weren't being referred to the clinic or why they weren't being accepted in the clinic was a matter of concern for me, and I told Mr. Longhi about that and that is when I suggested to him that he take some vacation. He had accumulated quite a bit of vacation time, and in addition to that he would have lost it if he didn't take it then because about the same time was issued an edict that you couldn't carry over your vacation beyond a second year. I suggested that he take a vacation, let me look into this clinic and let me find out just what is wrong that we're not servicing enough people. He refused to do it, and in order to remove him from that clinic so that I could make the survey, I made the transfer to the Johnson Avenue Branch." According to Mr. Mulligan the appellant Mr. Longhi never reported to the Johnson Avenue Branch. On cross-examination, Mr. Mulligan testified that during the entire week in question, he was informed that the appellant was still at the Probation facility at 1100 Raymond Boulevard, Newark. Further testimony showed that the administration of the

program was strictly a County duty, even though the funding was partly from the State of New Jersey.

Mr. Edward Zirkel was called as the next witness. Mr. Zirkel is an Assistant Chief Probation Officer with the Essex County Probation Department. At the time in question, the witness was Assistant Chief Probation Officer in charge of the Johnson Avenue Branch of the Essex County Probation Department. Mr. Zirkel confirmed that Mr. Longhi was transferred to that Branch, commencing Monday, March 23, 1970. He further testified that on March 23rd, he noticed that Mr. Longhi had not signed in and that he called the Clinic, which was located at 1100 Raymond Boulevard and Mr. McAllister answered the telephone. He asked if Mr. Longhi was there, and he said Yes. He spoke with Mr. Longhi, identified himself, asked if he had received a copy of the memo and asked if he was going to report. Mr. Longhi's response was No. Mr. Zirkel further testified that Mr. Longhi never reported to the Johnson Avenue office.

Archibald D. McAllister, Principal Probation Officer No. 1 for the Essex County Probation Department, testified that he was administratively in charge of the Essex County Narcotic Clinic. He further testified that Mr. Longhi was the operator of the Narcotic Clinic under the title, "Director of the Narcotic Clinic as the Senior Probation Officer". Monthly reports for December, 1969; January, 1970; February, 1970 and March, 1970 were admitted for identification. During December, 1969, there were 6 volunteer patients and 62 probationers. During January, 1970, the total number of patients was 77—69 of which were probationers, 2 of which were referred by other agencies and 6 were voluntary. The February statistics show 116 people in treatment, 102 were proba-

tioners, 9 were voluntary patients and 5 were referred by other agencies. In March, 1970 there were 109 probation cases, 12 agency referrals and 17 voluntary patients. Mr. McAllister confirmed that a meeting was held on or about March 16, 1970, and those notified to attend were Miss Crowley, Mr. Hughes, Dr. Martin, Lawrence Longhi, Mr. Mulligan and Mr. McAllister. Everyone was present, except for Mr. Longhi. He further testified that the meeting was held, and Mr. Mulligan alluded to a telephone call he received from Mr. Russo on March 11th, explaining about the operation of the clinic. Generally the complaint was that we were not serving enough people.

Miss Muriel A. Crowley, Acting Chief of the Essex County Probation Department testified that during the year 1970, she was Assistant Chief Probation Officer at the Grove Street Branch of the Essex County Probation Department. Miss Crowley further confirmed that a meeting was held on March 16, 1970, and that Mr. McAllister related to the people at the meeting that there were certain problems or difficulties with the narcotics clinic.

Findings of Fact

1. Facts above set forth are incorporated herein as if fully set forth and are made a part of these Findings of Fact.

2. The appellant, Lawrence V. Longhi, was an employee of the Essex County Probation Department, and on the date in question, held the position Senior Probation Officer in charge of the Essex County Narcotics Clinic.

3. On or about March 17, 1970, the appellant's supervisor was Mr. William F. Mulligan.

4. On March 17, 1970, Mr. William F. Mulligan notified the appellant that his services were being terminated at the Essex County Narcotics Clinic which was located at 1100 Raymond Boulevard, Newark, New Jersey.

5. On March 20, 1970, the appellant, Lawrence V. Longhi, received notice that he was transferred from the office at 1100 Raymond Boulevard, to another office of the Essex County Probation Department, located at Johnson Avenue, Newark, New Jersey.

6. Said notice of transfer stated that Mr. Longhi was the report to the Johnson Avenue Branch of the Essex County Probation Department on Monday, March 23, 1970.

7. Mr. Edward Zirkel, an Assistant Chief Probation Officer with the Essex County Probation Department, was the Probation Officer in charge of the Johnson Avenue Branch during the period of time in question.

8. The appellant, Lawrence V. Longhi, failed to report to the Johnson Avenue Branch on March 23, 1970, and any day subsequent thereto.

9. The appellant, Lawrence V. Longhi, remained at the Offices of the Essex County Probation Department, which were located at 1100 Raymond Boulevard from March 23rd, until April 9th, 1970.

10. On or about April 1, 1970, the appellant was served with a notice that he had been removed effective March

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23rd, 1970 for being absent without leave; failed to report to the Johnson Avenue Branch of the Essex County Probation Department for reassignment as directed.

CONCLUSION

This Hearer determines that the testimony of all the witnesses presented is both credible and believable. The testimony of the appellant, Lawrence V. Longhi, shows that he is a well educated and dedicated civil servant. Said testimony further shows that the appellant was sincere in his conviction that the narcotics clinic could not operate without his assistance and presence at 1100 Raymond Boulevard, Newark, New Jersey.

However, N.J.A.C. 4:1-16.14(a) states, "Any employee who is absent from duty for five consecutive business days without notice and approval of his superior of the reason for such absence and the time he expects to return or who fails to report for duty within five business days after the expiration of any authorized leave shall be held to have resigned not in good standing."

Any violation of this Rule must be based upon the following: (a) Absent from duty; (b) Five consecutive business days; (c) Without notice and approval of his superior of the reason for such absence; and (d) The time he expects to return. The term 'duty' is defined as the action required by one's occupation or position, assigned service or business, conduct due to superiors. It is this Hearer's interpretation of N.J.A.C. 4:1-16.14 that an individual is absent from duty when he is not physically present at the place where he has been assigned by his superior. In the instant case, the appellant, Lawrence V. Longhi, was assigned effective March 23, 1970,

Appendix D

to the Johnson Avenue Branch of the Essex County Probation Department. At no time subsequent to that assignment did the appellant appear at the Johnson Avenue Branch. Therefore, the appellant was absent from duty. Said absence continued for five consecutive business days. Although notice was given to his immediate superior of his refusal to report to the Johnson Avenue Branch, said reasons were not approved by his superior. And no time was given when the appellant would return to his duty.

It has been argued by counsel for the appellant that said refusal is in fact insubordination and therefore the appellant shoud not have been charged under Section 4:1-16.14. It is this Hearer's conclusion that the Appointing Authority could have charged the appellant with acts of insubordination under Section 4:1-16.9, Resignation resulting from unauthorized absence under 4:1-16.14, or Absence without leave under 4:1-17.23. The election by the Appointing Authority to proceed under 4:1-16.14 is proper and in accordance with the Rules of the New Jersey State Civil Service Commission.

RECOMMENDATIONS

For the reasons hereinabove set forth, this Hearer recommends that the action of the Appointing Authority, the Essex County Probation Department in removing the appellant, Lawrence V. Longhi, Senior Probation Officer, effective March 23, 1970, be upheld.

ANTHONY P. SPIRITO
Hearing Officer

Dated: November 15, 1974.

APPENDIX E

Notice of Exceptions

CIVIL SERVICE COMMISSION

A-13 NPH

LAWRENCE V. LONGHI,

Appellant,

vs.

ESSEX COUNTY PROBATION DEPARTMENT AND DEPARTMENT OF CIVIL SERVICE,

Respondent.

To: The Honorable Commissioners
of the Civil Service of N.J.

TAKE NOTICE that Lawrence V. Longhi, the Petitioner in the above entitled proceeding, whose petition dated the 10th day of April, 1974, was dismissed by the Hearing Officer, Anthony P. Spirito in a decision dated the 15th day of November, 1974, does hereby appeal and take exception from the said decision to the Civil Service Board of Commissioners.

This notice is given in compliance with N.J.A.C. 4:1-5.6 (c) and subpart 5-6.101.

DATED: Dec. ??, 1974

ROBERT J. CITRINO, JR.
Attorney for Petitioner

Appendix E

Exception 1.

Conclusion by Hearing Officer that the election by the Appointing Authority to proceed under Rule 4:1-16.14 was proper and in accordance with the Rules of the New Jersey State Civil Service Commission (Decision P. 13).

Rule 4:1-16.14 is an administrative procedure to clear the books when an employee disappears and his whereabouts are unknown. There were no due process requirements under the Rule in 1970. There are no notice of charges, no hearing, no presumption of innocence, no discretion in imposing a suitable sanction. The Civil Service Rules provide a procedure whereby an employee who is allegedly AWOL may be disciplined. These Rules were ignored by the Appointing Authority. This deprived petitioner of his due process and Civil Service protection.

The Hearing Officer never understood the importance of the distinction between the two methods of procedure (T. 13-5 to T. 14-20; T. 14-21 to T. 15-18; T. 20-7 to T. 26-16; T. 74-1 to 5; T. 141-2 to 15; T. 142-24 to T. 143-1; T. 150-24 to T. 151-15; T. 160-3 to 4). Throughout the Hearing the Officer used the word "charge" in referring to the matter of petitioner's removal from the Civil Service. Even after its inappropriateness was made clear to him and he stated that he understood the significance of the "issue/charge" distinction (T. 55-9 to 22). At T. 74-21 he used the word "charge" and again at T. 145-3 to 8; T. 160-3 to 4; 2T. 60-3 to 10. In his decision at Page 13 he states the Appointing Authority could have "charged" the appellant with acts of insubordination under Section 4:1.16-9, Resignation resulting from unauthorized absence under 4:1-16.14, or Absence without leave under 4:1-17.23. Petitioner was never "charged" with anything, and he

could not be charged under 16.15 which is a non-disciplinary Rule. He was resigned or removed as a result of Mr. Mulligan's March 30, 1970, action letter, but he never had charges against which he could have defended under the due process protections pressed against him.

Moreover, the Officer permitted testimony of other "possible charges" to be admitted into evidence. Petitioner came prepared to argue the issue of whether his resignation or removal under 16.14 was proper. He was not there to refute evidence about stale "charges". Counsel for petitioner pointed out to the Officer that the Officer was focussing on charges of insubordination at T. 160-22 to 24. In fact, most of the hearing dealt with "charges" of insubordination. The Hearing Officer overruled counsel's objections to the admission of irrelevant and prejudicial evidence about charges which were never brought against petitioner throughout the hearing (T. 97-24 to T. 101-24; T. 101-12 to 25; T. 102-14 to 19; T. 105-7 to 9; T. 106-12 to 23; T. 108-11 to 19; T. 113-9 to 10; T. 119-19 to 25; T. 121-5 to 12; T. 175-10 to 12; T. 183-11 to 18; T. 216-24 to T. 217-7; 2T. 9-21 to 2T. 12-6; 2T. 19-14 to 20; 2T. 20-15 to 25; 2T. 27-25 to 2T. 28-16; 2T. 29-1 to 13; 2T. 38-22 to 2T. 39-6; 2T. 41-20 to 25; 2T. 42-17 to 25; 2T. 43-6 to 12; 2T. 52-21 to 2T. 53-4; 2T. 56-2 to 24; 2T. 57-14 to 21).

It was argued that evidence of petitioner's prior conduct could be brought in to rebut his testimony that he had a divided responsibility, i.e. not only to the County, but to the State and a moral responsibility to his clients. Yet, no evidence was ever introduced to negate his contentions. Petitioner never denied he had a responsibility to the County yet this is the only possible basis on which the "charges" of insubordination could be brought in. This evidence was not necessary to rebut petitioner's

claim of divided responsibility. All it did was to confuse the issue and prejudice the case.

The other basis on which the alleged acts of insubordination were introduced was that it was relevant to determine the proper sanction. Yet, there was no sanction to determine. There was no range of punishment to impose. There was no charge brought which would have resulted in a disciplinary offense. Petitioner's "punishment" was resignation or removal from the Civil Service roles. Any evidence brought in for the purpose of determining the proper penalty had to be prejudicial, immaterial and irrelevant.

Exception 2.

The finding by the Hearing Officer that Appointing Authority could have charged the appellant with acts of insubordination under Section 4:1-16.9, Resignation Resulting from Unauthorized Absence under 4:1-16.14 or Absence Without Leave under 4:1-17.23 (Decision, P. 13) was improper. What could have been done is irrelevant. The evidence introduced to prove what could have been done was prejudicial to determination of the one issue to be decided, whether petitioner's resignation or removal under 16.14 was proper.

This finding indicates that the Officer was prejudiced by the introduction of the extraneous, immaterial and irelevant evidence of other possible charges—charges which were never brought under proper Civil Service procedures.

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Exception 3.

The finding that petitioner was absent without leave within the meaning of Rule 4:1-16.14 was error. Petitioner was physically present at his job as Clinic Director during all five days he was alleged to have been AWOL. Petitioner's presence and wherabouts as well as his reasons therefor were known at all times to the Probation Department (T. 187-17 to 22). Petitioner's conduct is antithical to absence and to resignation.

Exception 4.

Hearing Officer's finding that the Drug Clinic was a "branch office" of the Probation Department (Decision, P. 11). The Clinic was a joint State and County operation (T. 79-13 to 20; T. 85-12 to 19; T. 189-17 to 22; T. 185-18 to 19).

This finding led the Officer to the conclusion that petitioner did not have a divided responsibility and that his only obedience should have been to the County. Petitioner was appointed to his position by the County and State. He wore two hats. He could not abdicate his responsibility to either appointing authority.

The Officer repeated the same error in his decision when he found that administration of the Drug Clinic was "strictly a County duty" (Decision, P. 9-10) (T. 79-13 to 20; T. 85-12 to 19; T. 189-17 to 22; T. 185-18 to 19). All show the facility was a joint venture having probation and non-probation clients. This finding had the same result on the Officer's attitude towards petitioner's resignation or removal.

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Exception 5.

The Finding that the testimony of all witnesses presented was credible and believable was error (Decision, P. 12).

The testimony of William F. Mulligan was replete with inconsistencies and statements which were incredible and not worthy of belief.

At T. 182-13 to 15, Mr. Mulligan stated that the Drug Clinic was a "branch office" of the Probation Department; at T. 185-18 to 19, he reveals it was a joint State and County program.

At one point Mr. Mulligan stated he suggested petitioner leave the Drug Clinic for a while so not to "lose" accrued vacation time. Later he admitted his motive was to remove petitioner from the clinic in order to make a survey of it.

Mr. Mulligan, as a result of internal department reports, The Russo-Augenblick letter, and the Freeholder Resolution (see exhibits) knew that the Clinic was not functioning at full capacity because of the confidentiality problem to non-probation clients. Yet Mr. Mulligan testified he removed petitioner as Clinic Director to make a survey of the problem, and then he never made the survey (T. 188-19 to T189-3; T. 205-21 to T. 206-2).

Mr. Mulligan's concern, over why the clinic was not working at full capacity is refuted by the fact only Probationary clients were moved to East Orange (T. 198-24; T. 188-3). The East Orange facility did not treat voluntary patients so the "clinic" was not moved to East Orange as Mr. Mulligan testified (T. 188-24). Petitioner's concern over the voluntary patients proved to be justified

since on April 9, 1970, when the "clinic" was moved to East Orange, the patients who were not given enough time to be placed in other drug treatment programs were left to the streets. Another inconsistency appears between testimony of Mr. Mulligan at T. 207-25 and T. 208-1 where he said he had no opposition to losing control over the clinic and T. 211-11 to 16 where he said he wanted the clinic to remain as it was structured.

Another inconsistency in Mr. Mulligan's testimony occurs at T. 207-5 to 15. There Mr. Mulligan testified that Mr. Russo told him that there were not enough patients at the clinic, but did not tell him the reason why. The Russo-Augenblick letter, which was seen by Mr. Mulligan, is evidence that Mr. Russo knew the reason and must have told Mr. Mulligan (See Exhibit 94, Russo letter of 8/14).

Again at T. 208-10 to 19, Mr. Mulligan after all the facts and reasons had been made known to him states he does not know about the existence of any inconsistency between treating voluntary patients and reporting them as violators. This statement is totally incredible.

So is the statement that the relationship between the submission of petitioner's white paper report at 2:00 p.m. on March 17 and his removal as Clinic Director at 3:00 p.m. was a "coincidence" (T. 190-20). This testimony is incredible in view of the time sequence of events and absence of intervening or independent causes. There was no testimony of any chain of events independent of the submission of the report which would have triggered petitioner's removal 3:00 p.m. There was no testimony Mr. Mulligan had taken any steps which would have led to the removal at 3:00 p.m. The only established facts are

that at 2:00 p.m. the report was submitted and at 3:00 p.m. the petitioner was removed. In fact, up to the time he was removed petitioner had been praised by Mr. Mulligan and others for doing an "outstanding job" (T. 191-4 to 15; T. 193-16 to 18; T. 197-19 to 25). The only logical inference is that there was a cause and effect relationship between the two events.

Exception 6.

Failure of Hearing Officer to make finding of fact that petitioner submitted a white paper report to Mr. Mulligan one hour prior to his removal as Clinic Director (Decision, P. 11-12). This omission is very significant because it reveals that the Officer was selective in his fact findings. It discloses that the effect of all the inadmissible prejudicial testimony reached the Officer. It also made it appear as if there was complete absence of personal or political motivation in Mr. Mulligan's removing petitioner.

Exception 7.

Failure of Hearing Officer to relate accurately in his decision the testimony of Mr. Collins regarding the Civil Service letter which contained "internal error" (Decision, P. 4; T. 58-21 to T. 61-3).

Mr. Collins testified to a Civil Service letter sent by Mr. Mangione on August 5, 1970, to Mr. Wilkenson which contained "internal error", incorrectly referring to a Departmental hearing which was never convened and to charges against petitioner which were never filed. It was clearly stated by Mr. Collins that Mr. Mangione's letter

was in error. The Officer in his decision refers to another letter dated June 2, 1970, as being the one containing the "internal error". The June 2 letter from Mr. Mulligan to Judge Sugrue contained information from Mr. Mangione which recited the errors of the Civil Service in the May 5 letter.

Exception 8.

Finding by Hearing Officer that Mr. Collins testified petitioner was granted a rehearing by the Civil Service Commission for being absent without leave (Decision, P. 5). T. 47-16 to 21 reveals what he said was that the rehearing was on the legality of petitioner's removal.

Exception 9.

Finding of Officer that Mr. Collins testified petitioner was "charged" with 4:16.14 (Decision, P. 4). Mr. Collins never testified to that effect. He never mentioned petitioner had been "charged" with anything (T. 54-20 to 22). Mr. Collins correctly used the word "issue" when referring to Rule 16.14. The Officer's misquotation to "charges" indicates his confusion, and misunderstanding of the Civil Service Rules and procedures.

Exception 10.

Failure of Hearing Officer to make findings of fact that petitioner's removal from the Drug Clinic was a punishment for his exercise of his freedom of speech. First, the Hearing Officer cut short examination into Mr. Mulligan's motives for removing petitioner (T. 209-25 to T.

211-9) and then he disregarded the only logical inference derivable from the one hour gap between submission of the white paper report and the removal.

Exception 11.

The Recommendation of the Hearing Officer was that the removal of petitioner from the Civil Service be upheld. Many reasons why the removal cannot be upheld have been advanced in the previous exceptions. There is another one which pertains to the disproportionate size of the penalty imposed by such removal. Removal is the most drastic sanction that can be imposed. Petitioner's prior record covered 12 years of dedicated and even outstanding public service. He chose to remain at his post out of a dedication and sense of duty to the State and to his patients (T. 89-9 to 18). Without petitioner, the non-probationary patients were left to the streets, and this is where they wound up on April 10. Petitioner was doing the most valuable and important work. He didn't even take vacations, so he accrued an excessive amount of vacation time. He was a man dedicated to his job. A man committed to an idea. He was dedicated to his patients.

Petitioner was the logical choice to head the restructured clinic. His summary removal and the publication of illegal charges against him—charges which were never properly filed—cost him the directorship. He was unemployed for two years. A black mark was stamped on his head. Petitioner lost all his Civil Service benefits and status. For five years now petitioner has suffered—all because of his dedication. He has suffered because of five days of dedication and commitment. He has suf-

fered not because he shirked his responsibility, but because he faced it. The totality of the picture, once it is brought into perspective, indicates no want of mitigating circumstances. His treatment was summary and most severe. His actions do not merit such treatment. A sense of fairness and justice require a determination which is more in accordance with the facts of the instant case and the spirit of the law.

As to the proceedings, petitioner takes the following exceptions:

Exception 12.

The Civil Service Commission's long delay in determining the issue of whether petitioner's resignation or removal for absence without leave has resulted in a denial of justice.

On April 10, 1970, petitioner made an appeal to the Civil Service Commission regarding the action taken against him.

On September 24, 1970, the Civil Service informed petitioner a hearing would be held. On October 6, 1971, the hearing was set for November 30, 1971. At the hearing, petitioner, who had been advised to proceed without counsel by Mr. Mangione, the Director of Classification, appeared *pro se*. The hearing was conducted improperly and was replete with legal error. The decision was rendered on January 13, 1972.

After the decision, petitioner sought to reopen the appeal. On April 7, 1972, the Civil Service Commission notified petitioner that it would not permit reopening.

On October 3, 1972, the Civil Service Commission started to reconsider reopening the appeal and granted a reopening on January 9, 1973. The rehearing was scheduled for September 12, 1973. At the rehearing petitioner argued the only issue to be determined was the legality of his removal under 16.14. On January 7, 1974, the Hearing Officer decided that all matters pertaining to alleged acts of insubordination and neglect of duty were proper evidence.

The rehearing was set for August 8 and 15, 1974. At this hearing after the Hearing Officer determined the only issue to be decided was the propriety of petitioner's removal for absence without leave, he let in the same evidence of unpressed charges. Based on such prejudicial and immaterial testimony, petitioner's removal was upheld.

Petitioner has been waiting five years for a just determination of the propriety of his removal. Five years. Justice delayed is justice denied. Petitioner has experienced a denial of justice which must be remedied forthwith.

Exception 13.

Misconception of Hearing Officer as to burden of proof (T. 13-5 to T. 14-20; T. 3-8 to 9; T. 10-23 to T. 12-11; T. 155-13 to T. 156-4), distinction between disciplinary and non-disciplinary hearings (T. 14-21 to T. 15-18); applicable rules of procedure (T. 20-7 to T26-16), and his inability to determine whether Rule 16.14 was disciplinary in nature (T. 150-24 to T. 151-15) demonstrate his unfamiliarity with the case and the Civil Service Rules.

Appendix E

The misconceptions, ignorance and misunderstanding of the Rules and procedures prejudiced petitioner because it made the hearing one in which petitioner had to defend against "charges" which were never lodged and which had no bearing on the issue—the legality of petitioner's resignation or removal under 16.14. The Hearing Officer did not understand the nature of the proceeding which led to his hearing irrelevant, prejudcial testimony.

Exception 14.

The refusal of the Hearing Officer to allow testimony as to the basis for appeal (T. 62-17 to T. 68-4). This prevented petitioner from having the Hearing Officer realize he was deciding the wrong issue and caused the Hearing Officer to allow in improper, irrelevant and prejudicial testimony which influenced the Hearing Officer's decision.

Exception 15.

The failure of the Hearing Officer to rule against allowing the County to introduce evidence of insubordination and other acts (T. 74-18 to 25). This irrelevant testimony was highly prejudicial to petitioner.

Exception 16.

Conduct of Hearing Officer for criticizing witness's honest and good-faith effort to answer hypothetical, vague and nebulous questions (T. 121-5 to 12). This conduct revealed the Hearing Officer's bias.

Appendix E

Exception 17.

Disallowing questioning as to appropriateness of sanction (T. 198-1 to 6). This ruling deprived petitioner opportunity to present evidence in mitigation of the punishment and to clarify why the election of the County to proceed under Rule 4:1-16.14 was improper.

Exception 18.

Disallowing questioning as to appropriateness of "charge" (T. 198-22 to 24). This ruling deprived petitioner of opportunity to present evidence in mitigation of the punishment and to clarify why the election of the County to proceed under Rule 4:1-16.14 was improper.

Exception 19.

Disallowing questioning as to true motivation of supervisor who removed petitioner (T. 209-15 to T. 211-19). This ruling prevented petitioner from proving that his removal had been politically and/personally motivated.

Exception 20.

Overruling objection concerning admission into evidence of unsigned copy of report (2T. 52-21 to 2T. 53-4; 2T. 56-21 to 24). The admission of this evidence was improper, irrelevant and highly prejudicial to petitioner.

Exception 21.

Overruling objection concerning evaluation of petitioner in report (2T. 57-14 to 21). The admission of this evi-

dence was improper, irrelevant and highly prejudicial to petitioner.

Exception 22.

Failure of Chief Examiner, William Druz, and A. R. Mangione to respond to subpoenas and testify, thereby preventing petitioner from presenting testimony; and failure of Hearing Officer to compel their attendance (T. 70-23 to T. 71-21).

Exception 23.

Decision of Officer to allow testimony without making counsel aware of what the issue the testimony was coming in on (T. 36-21 to 25). This made it impossible for counsel to present or rebut evidence, i.e. to prove his case.

Exception 24.

Question by County about why the Clinic was not functioning at full capacity was a false question designed to mislead the Hearing Officer into believing a false set of facts existed (T. 179-25 to T. 180-5). The County knew by virtue of internal reports and resolutions of the Board of Freeholders that the reason why the Clinic was not functioning, and that the Clinic program was not being wound down. (See attached exhibits)

CITRINO, BALSAM & FORD
Attorneys for Appellant
By: Frank H. Reimers

APPENDIX F

Report of Hearing Officer dated January 12, 1972

State of New Jersey
CIVIL SERVICE COMMISSION
James A. Alloway, President

January 13, 1972

DECISION ON APPEAL OF LAWRENCE V. LONGHI

The appeal of Lawrence V. Longhi, Senior Probation Officer, Probation Department, Essex County, from the action of the appointing authority in removing him effective March 23, 1970, on charges, was regularly brought on for hearing on November 30, 1971, at Newark, New Jersey, before Honorable Anthony J. Statile, of the Civil Service Commission, who rendered his decision on January 13, 1972.

Appearances:

LOUIS R. CEREFICE, ESQ., for Essex County Probation Department, Respondent

LAWRENCE V. LONGHI, pro se

The following witnesses testified in behalf of the respondent:

William F. Mulligan

Edward C. Zirkel

Appendix F

The appellant, Lawrence V. Longhi, did not testify in his own behalf, but called the following witnesses:

Roger Colonna

Frank Domenic

Yoshiteru Kawano

The following exhibits were received in evidence:

P-1	Memo dated March 18, 1970, from Mulligan to Mr. Longhi
P-2	Letter dated June 1, 1970
P-3	Letter and envelope
P-4	Document
P-5	Memo dated March 17, 1970, from Mr. Mulligan
D-1	Report
D-2 & D-3	Memos

DISCUSSION

On March 30, 1970, the appellant, Lawrence V. Longhi, was notified by William F. Mulligan, Chief Probation Officer, Essex County, that his name had been removed from the payroll as of March 23, 1970. This action came as a result of the appellant's failure to report to the Johnson Avenue Branch of the Essex County Probation Department for re-assignment as ordered by Mr. Mulligan.

Appendix F

At 10:00 A.M. on the date scheduled for hearing of this appeal, all parties involved were present and ready to proceed. The appellant, Lawrence V. Longhi, was not represented by counsel and chose to represent himself.

The appellant was first appointed to the position of Probation Officer in 1958, serving in that capacity until November 28, 1966, when his position title was changed to Senior Probation Officer. He served as Senior Probation Officer until his dismissal dated March 23, 1970, making it a total of 12 years of employment as a probation officer.

On May 27, 1970, a letter signed by Chief Probation Officer William Mulligan was sent to A. R. Mangione, Jr., Director of Municipal Classification, Department of Civil Service. A copy of Preliminary Notice of Disciplinary Action to Senior Probation Officer Lawrence V. Longhi was enclosed. The letter also stated that an additional copy of this Notice of Disciplinary Action had also been sent to Mr. Longhi's attorney, one Philip Mylod. The charges made were as follows:

CHARGE: *Insubordination*

1. Failure to attend meeting with the Chief Probation Officer 9:30 A.M., March 26, 1970.

2. Absent from duty March 16, 1970, without permission.

3. Failure to attend meetings with Principal Probation Officer on January 8, 15, 22, February 19, 26, March 5, 12, 1970.

4. Failure to report to Principal Probation Officer on January 12, 1970, to receive evaluation.

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5. Submission of report to Freeholder Director Stabile on March 13, 1970, without prior discussion with Chief Probation Officer.

CHARGE: *Neglect of Duty*

1. Failure to submit Daily Report sheets as directed by your supervisor between October 30, 1969 and March 23, 1970.

2. Failure to submit monthly statistics as directed by your supervisor for any month from November 1969 through March 1970.

3. Failure to submit Annual Report as directed by your supervisor.

4. Failure to provide coverage for the Essex County Narcotic Clinic on October 15, 1969, October 17, 1969 and February 13, 1970.

5. Failure to report to Judge Leon Kapp on March 13, 1970 to confer re: narcotic offender.

6. Failure to confer with Judge Leon Kapp on September 16, 1969 re: narcotic offender.

7. Failure to report to new assignment at the Johnson Avenue Branch, Essex County Probation Department on March 23, 1970, as directed.

8. Continuous absence from duty after March 23, 1970.

Chief Probation Officer William F. Mulligan, in an office memorandum dated March 18, 1970, ordered Longhi transferred to the Johnson Avenue Branch effective 9:00 A.M., March 23, 1970. Mr. Longhi had been ordered to report directly to Assistant Chief Probation Officer Edward Zirkel for assignment of new duties.

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A Preliminary Notice of Disciplinary Action against Lawrence V. Longhi was sent to the appellant. The charges were insubordination based on the appellant's failure to attend a meeting with the Chief Probation Officer at 9:30 A.M. on March 26, 1970, and that the appellant was absent from duty without permission on March 16, 1970. The notice further stated that a hearing on these charges would be held on Wednesday, June 3, 1970, at 9:30 A.M. at the office of the Chief Probation Officer.

A letter dated June 1, 1970, was sent to Chief Mulligan by an attorney, Philip J. Mylod, who was representing the appellant Longhi. He informed Chief Mulligan that neither he nor his client Longhi would appear at the hearing because it was his opinion that the hearing was void, improper and without any basis in law. Mr. Mylod also stated that the appellant would protest the removal presently pending before the Civil Service Commission.

Under questioning by this Commissioner, Mr. Longhi stated that Mr. Mylod was no longer his attorney and that he would not be represented by counsel during the hearing.

William F. Mulligan, the Chief Probation Officer, testified that the appellant had been transferred by him to the Johnson Avenue Branch to work under Assistant Chief Edward Zirkel and that he failed to report for duty at that branch, preferring to remain in the Narcotic Clinic where he had been previously employed. Mr. Mulligan testified that the order was made in writing. Mr. Mulligan further testified that when the appellant continued in his

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failing to report to the Johnson Avenue Branch, Mr. Longhi was notified that his name was removed from the payroll and subsequently a hearing was arranged or scheduled. Following this action, the attorney, Mr. Mylod, got in touch with Mulligan. Mr. Mulligan further stated that although the appellant was removed from the Directorship of the Clinic, he continued to report to the Clinic.

Under further questioning, Mr. Mulligan testified that the appellant failed to contact him or anyone else in the Probation Department. Longhi failed to follow orders given him by Mulligan because Longhi insisted that he was employed by the State and could not be removed as Director of the Clinic.

Mr. Longhi declined to testify in his own behalf.

FINDINGS OF FACT

1. The discussion portion of this Decision shall become part of these findings.

2. Mr. Longhi was not represented by an attorney and chose to represent himself.

3. The appellant was employed as a probation officer by the County of Essex from 1958 to the time of the action in 1970.

4. Allegations of insubordination and neglect of duty must be accepted as being true because the appellant failed to disprove the charges.

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CONCLUSION

The Essex County Probation Department was correct in suspending the appellant, Mr. Longhi. The Hearer cannot find any credible testimony to the effect that the appellant was not insubordinate nor negligent in his duty as a Senior Probation Officer.

There is ample credible testimony to the effect that the dismissal was made in good faith and no personal animosity or ill feeling existed on the part of the hiring authority.

ORDER

For the reasons hereinabove stated, the action of the appointing authority, Probation Department, County of Essex, in removing Mr. Longhi from the payroll as of March 23, 1970, is affirmed and upheld. The appeal is dismissed.

Decision rendered by Civil Service Commissioner Anthony J. Statile.

I hereby certify that the above is a true copy of the original which appears in the official record of the Civil Service Commission.

Mr. Longhi resides at 94 Sycamore Avenue, Livingston, New Jersey.

WILLIAM DRUZ
Chief Examiner and Secretary
Department of Civil Service

APPENDIX G

Letter Requesting Hearing dated April 10, 1970

306 Tremont Place
Orange, New Jersey

April 10, 1970

Mr. A. R. Mangione
Director of Classification
Civil Service Commission
1100 Raymond Boulevard
Newark, New Jersey

Dear Mr. Mangione:

I respectfully request a formal hearing before the Civil Service Commission because of letter I received on April 1, 1970, by mail, stating I was off the payroll as of March 23, 1970, for being absent without leave.

During this period, I reported daily and worked at the Essex County Narcotics Clinic where other Essex County employees knew of my whereabouts.

Very truly yours,

LAWRENCE V. LONGHI

APPENDIX H

Letter Removing Petitioner from Position of Employment dated March 30, 1970

[LETTERHEAD OF ESSEX COUNTY PROBATION DEPARTMENT]

March 30, 1970

Mr. Lawrence V. Longhi
306 Tremont Place
Orange, N. J.

Dear Mr. Longhi:

Your failure to report to the Johnson Avenue Branch of the Essex County Probation Department for reassignment as directed, constitutes absence without leave. Therefore, your name has been removed from the payroll as of March 23, 1970.

Very truly yours,

WILLIAM F. MULLIGAN
Chief Probation Officer

WFM:S

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Relevant Statutes, Administrative Codes and Regulations

STATUTES:

N.J.S.A. 11:15-2—Causes for removal after working test (probationary) period

The commission shall enumerate in its rules the reasons which shall be considered just cause for the removal of a permanent employee in the classified service after the completion of the working test period, and prescribe by rule a procedure based upon this section and sections 11:15-3 to 11:15-6 of this title and in accordance therewith for handling such removals.

N.J.S.A. 11:15-3—Form for enumerating causes of removal

The commission shall cause to be prepared and distributed among the appointing authorities a form on which any appointing authority removing any employee shall enumerate the cause or causes as set forth in the rules of the commission or other cause which constitutes the ground for removal and the act of the employee constituting such cause. The form when completed shall be delivered to the removed employee and a copy thereof forthwith delivered to the commission.

ADMINISTRATIVE CODES:

SUBCHAPTER 5. HEARINGS

N.J.A.C. 4:1-5.1—Right to a hearing

The Commission shall hold hearings required by law as indicated in Section 3.5(i) [Powers and duties of Commis-

sion] of this Chapter and any person entitled to a hearing before the Commission may request such a hearing.

N.J.A.C. 4:1-5.2—Request for a hearing

(a) The request for a hearing shall:

1. Be in writing, signed by the petitioner or attorney in behalf of the petitioner and include the petitioner's mailing address;

2. Specify the ruling, action or matter on which the hearing is requested and indicate what relief is desired;

3. Set forth the facts on which the request is based in sufficient detail to enable the Commission to determine whether or not the petitioner is entitled to a hearing or any other relief.

(b) A hearing on the merits of any petition or request may be denied if it does not set forth specific facts or reasons or if, in the determination of the Commission, the facts and reasons which are set forth would not entitle the petitioner to any relief. The petitioner shall be notified forthwith of such denial. Should a petitioner fail to reply to a Commission request for more information, such failure shall, after 20 days from the date of such request, be considered a withdrawal of the petitioner's appeal.

N.J.A.C. 4:1-5.3—Time limit for filing request

A petition or request to the Commission for a hearing or other relief, unless otherwise required by law or these rules, must be received by the Commission within 20 days after date of receipt of the notice by the petitioner of the order, ruling or other action concerning which the hearing or other relief is requested.

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N.J.A.C. 4:1-5.15—Departmental hearing

(a) The employee shall have the right to a Departmental hearing in every disciplinary action involving a permanent employee where the contemplated penalty may be:

1. Suspension of more than five days at one time;

2. Suspensions or fines more than three times or for an aggregate of more than 15 days in one calendar year;

3. Demotion; or

4. Removal;

(b) Such Departmental hearing shall be commenced as soon as possible and not later than thirty days after service of a copy of the charges.

SUBCHAPTER 16. SEPARATIONS AND DEMOTIONS

N.J.A.C. 4:1-16.7—Suspension, fine and demotion for disciplinary purposes

(a) An appointing authority may suspend without pay or with reduced pay, fine or demote an employee due to inefficiency, incompetency, misconduct, negligence, insubordination or for other sufficient cause, however:

1. An employee who shall be suspended, fined or demoted more than three times in any one year, or more than five days at one time, or for a period of more than 15 days in the aggregate in any one calendar year shall be served with written charges and have the right of appeal to the Civil Service Commission. The Commission shall have the power to revoke or modify the action of the appointing authority except that removal from service shall not be substituted for a lesser penalty;

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2. The appointing authority shall notify the employee and the Department of Civil Service of the reasons for the suspension, fine or demotion regardless of the extent or duration of the disciplinary action;

3. No suspension shall exceed six months.

(b) In State service any disciplinary suspension, fine or demotion of less severity than those from which appeal may be made to the Commission may be the subject of a grievance within the departmental grievance procedures as provided in accordance with Subchapter 23 (Employer-Employee Relations) of this Chapter.

N.J.A.C. 4:1-16.8—Removal

(a) A permanent employee in the classified service may not be removed except for just cause upon written charges. Notice of the removal shall be sent to the employee on the form prescribed by the Civil Service Commission and a copy of said notice shall be sent to the Civil Service Department at the same time.

(b) A provisional or temporary employee may be terminated at any time at the discretion of the appointing authority. A provisional or temporary employee who has been terminated shall have no right of appeal to the Civil Service Commission.

N.J.A.C. 4:1-16.9—Causes for removal

(a) Any one of the following shall be cause for removal from the service although removals may be made for sufficient causes other than those listed:

1. Neglect of duty;

2. Incompetency or inefficiency;

3. Incapacity due to mental or physical disability;

4. Insubordination or serious breach of discipline;

5. Intoxication while on duty;

6. Chronic or excessive absenteeism;

7. Disorderly or immoral conduct;

8. Willful violation of any of the provisions of the Civil Service statutes, rules or regulations or other statutes relating to the employment of public employees;

9. The conviction of any criminal act or offense;

10. Negligence of or willful damage to public property or waste of public supplies;

11. Conduct unbecoming an employee in the public service; or

12. The use or attempt to use one's authority or official influence to control or modify the political action of any person in the service or engaging in any form of political activity during working hours.

N.J.A.C. 4:1-16.10—Hearing on causes for removal

The Civil Service Commission shall grant a hearing on the causes for removal if the employee sought to be removed appeals to the Commission for such a hearing as prescribed in Section 5.3 (Time for filing request) of this Chapter. The Commission in its decision may revoke or modify the action of the appointing authority.

N.J.A.C. 4:1-16.14—Resignation resulting from unauthorized absence

(a) Any employee who is absent from duty for five consecutive business days without notice and approval of his

superior of the reason for such absence and the time he expects to return or who fails to report for duty within five business days after the expiration of any authorized leave shall be held to have resigned not in good standing.

(b) The employee shall be properly notified of the action by personal service or certified mail as provided by regulation. The appointing authority shall report the resignation to the Department of Civil Service.[1]

SUBCHAPTER 17. LEAVES OF ABSENCE

N.J.A.C. 4:1-17.23—Absence without leave

(a) Any unauthorized absence of an employee from duty shall be an absence without leave and is cause for disciplinary action.

(b) Leave granted for a particular reason and used for a purpose other than that for which such leave has been granted shall be an unauthorized absence and may be cause for disciplinary action.

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[1] This section was amended effective February 1, 1972 to read as follows:

> "(b) The employee shall be properly notified by personal service or certified mail return receipt requested of his involuntary resignation and the precise reasons therefor, and entitlement to a departmental hearing if he so desires in accordance with Section 5.15 (Departmental hearing) of this Chapter. The appointing authority shall report the resignation to the Department of Civil Service."

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REGULATIONS:

5-6.101(b)—Assignment

The President of the Civil Service Commission will from time to time review appeals outstanding before the Civil Service Commission to determine whether a sufficient backlog exists to assign hearing officers in accordance with N.J.A.C. 4:1-5.6.

If the President thereafter so decides, he will distribute cases according to the following priorities:

1. Removals
2. Layoffs
3. Suspensions for more than 5 days
4. Demotions
5. Administrative Appeals

5-6.101(d)—Submission of the Hearing Officer's Report and Recommendation

Ten (10) copies of the report and recommendations of hearing officers must be prepared and submitted to the Civil Service Commission in the written form described in N.J.A.C. 4:1-5.11(b) within 10 days from the date of hearing or within 10 days of return of the transcript of the hearing.

Copies of the Hearing Officer's Report and Recommendations will be served promptly on all parties to the proceeding. Ten (10) copies of any exceptions to the Hearing Officer's Report and Recommendations may be filed by any party with the Civil Service Commission within ten (10) calendar days after the service of the report and recommendations, provided, however, that the President of the

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Civil Service Commission may for good cause shown extend the time for filing such exceptions. Copies of such exceptions and any supporting briefs shall be served simultaneously on all other parties, and a statement of such services shall be furnished to the Civil Service Commission.